Workers' Compensation Act Review

2003-04

Yukon
Government

Message from the Chair

As you are no doubt aware, the *Workers' Compensation Act* is an important piece of legislation that protects workers and employers in the territory against the result of workplace injuries and illnesses.

A three-person panel has been given the task of reviewing this Act and presenting options for change. Our ultimate goal is to ensure that the *Workers' Compensation Act* serves the needs of all stakeholders to the greatest extent possible.

As this legislation will impact all Yukon employers and workers, your involvement is essential. There will be a number of opportunities for you to comment during this process, from the early phase of gathering and compiling issues for review through to the period when you will be invited to give more in-depth views on options for changing the Act.

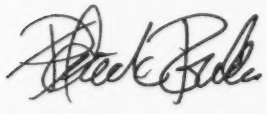
The other panel members and myself want to assure you that this consultation process will be open, inclusive and fair, and that we will keep you informed of the process every step of the way. There are no pre-determined outcomes and we will consider all Act-related suggestions given.

However, we would also like to remind you that the workers' compensation system is based on compromise, and there will need to be continued compromise from employers and workers for this process to be successful.

I invite you to read this document and take part in this important process. The first part of this booklet gives details about the overall review. The second part outlines the issues that we have collected so far, including some the Act itself requires that we review, and others suggested last year by the Auditor General.

I look forward to adding your ideas to the list, and working with you throughout this review process.

Patrick Rouble



Chair, Workers' Compensation Act Review Panel

History

There has been a workers' compensation system in the Yukon since 1917 that has protected workers and employers in the territory against the result of workplace injuries and illnesses.

The *Workers' Compensation Act* came into effect on January 1, 1993 and was amended in 2000. This Act builds upon the Meredith principles and continued compromise between workers and employers…the building blocks that gave rise to the original workers' compensation system in Canada. Attributed to Sir William Meredith, the six principles are:

1. Employers have a collective, rather than individual, liability for workplace injuries. Employers pay into a fund that is used to pay benefits to injured workers.
2. Benefits to workers are guaranteed in legislation.
3. Workers cannot sue employers or co-workers.
4. Workers' compensation is a no-fault system.
5. Workers' compensation is administered by a body that is independent of government with equal representation from labour and industry and with a neutral chair.
6. The board has judicial-like authority to make final decisions on claims for compensation.

In the Yukon, the Workers' Compensation Health and Safety Board (WCHSB) is the body responsible for administering the compensation system established by the *Workers' Compensation Act* and for ensuring that its principles are carried out.

This legislation gives the Board authority to:

- help injured or disabled workers and their dependents;
- collect assessment revenue from employers;
- maintain a debt-free compensation fund;
- regulate health and safety standards in the workplace; and
- establish a simple, fair and accessible appeal procedure.

Purpose of the Review

It's important that the Act be reviewed regularly to find out if there are areas of the legislation that need to be improved. The ultimate goal is to ensure that the *Workers Compensation Act* serves the needs of all Yukoners to the greatest extent possible.

The last time this Act was reviewed was in 1999, and it's a legislative requirement that another review take place now. The minister responsible for the Yukon Workers' Compensation Health & Safety Board, Peter Jenkins, initiated this review in December 2002, when he appointed a three-person panel. The panel is headed by MLA Patrick Rouble and includes Mike Travill and Ivan Dechkoff.

This panel's job is to examine issues mandated by the last review, those identified by the Auditor General and from Yukon stakeholders and other interested individuals and groups, and to provide the Yukon government with various options for amending the Act.

Patrick Rouble, Chair was first elected to the Yukon Legislative Assembly in the general election of November 4, 2002.

Mr. Rouble has owned and operated two small businesses, taught business planning courses and has worked in the construction, mining and tourism industries. He is currently completing a Masters degree in Business Administration from Royal Roads University in Victoria.

Ivan Dechkoff has been involved in the Financial and Business sector for over 33 years and most recently was the Community Manager for the CIBC in the Yukon and Northern British Columbia. In addition, for the past two and a half years, Mr. Dechkoff was a Director on the Board of the Workers' Compensation Health & Safety Board. He is well versed in the Legislative Act and the current WCB policies.

Mr. Dechkoff is currently the Employer Consultant for Workers' Compensation Health & Safety Matters and provides advice and counsels on such matters as safety, assessment and on the intent, process and procedures of the compensation system to employers of the Yukon.

Mike Travill has been the Workers' Advocate external to the Yukon Workers' Compensation Health and Safety Board since 1997. He was also 1st Vice-President of the Yukon Employees Union from 1999 to 2002.

Before coming to the Yukon, Mr. Travill was the Chair of the United Steelworkers' Health, Safety and Workers' Compensation Committee in Northern Alberta from 1982 to 1991. A significant work place injury led to a career change in 1990.

Mr. Travill takes a leave from his job as Workers' Advocate when he sits on this review panel.

Terms of Reference

In the interests of maintaining an open, transparent and fair process during this review, we are including here the complete Terms of Reference for this project.

A panel consisting of the Chair Mr. Patrick Rouble and co-members Mr. Mike Travill and Mr. Ivan Dechkoff will lead this review. The panel will report directly to the Minister of Workers Compensation. The review will include three phases and the scope will address the areas mandated for review by the Act itself and those suggested by the Auditor General in her recent 2002 Special Report.

The nine areas identified by the *Workers' Compensation Act* to be reviewed include:

1. expansion of disability, within the meaning of the Act;
2. the effectiveness and appropriateness of the board administering both the Workers' Compensation Act and the Occupational Health and Safety Act;
3. the use of deeming;
4. the effect of retirement on entitlement;
5. the role and use of indexing of benefits;
6. the method and limitations on calculating the maximum wage rate;
7. the role and effectiveness of the workers' advocate;
8. the adequacy of the system for spouses; and
9. any other matters that the Minister may direct.

Also, to be reviewed are the following issues identified by the 2002 Special Report of the Auditor General of Canada:

1. the need to address governance;
2. improve claims management;
3. control increasing claims and administration costs;
4. develop and implement creative and appropriate ways of attracting and retaining key personnel;
5. strengthen performance reporting to both management and outside stakeholders;
6. provide public interest representation on the Board of Directors;
7. remove the Chair of the Appeal Tribunal from the Board of Directors;
8. require that the President report to the Board of Directors alone and not to the Minister.

Phase 1

- The Review Panel is tasked with developing a discussion paper around the issues mandated for review.
- The Review Panel will consult with key stakeholders and other interested parties * for their feedback on the issues mandated for review. Written submission outlining the stakeholders' concerns, issues and options will be encouraged.
- The Review Panel, at its discretion, may bring forward to the Minister, in the discussion paper, other significant issues not mandated for review.
- The discussion paper will clearly identify each key issue and related stakeholders' and other interested parties' points of view. The discussion paper will be available to the public.
- The final discussion paper should reflect the principles of Workers Compensation and be specific to issues that are relevant to the legislation.
- When complete, the discussion paper will be presented to the Minister for review.

*Key stakeholders and other interested parties during the WCB Act Review will be those identified in the 2002 Special Report of the Office of the Auditor General of Canada. Page 6 Section 17 states "In addition to the Yukon Workers' Compensation Health and Safety Board, the key players are the Workers' Compensation Appeal Tribunal (Appeal Tribunal) and the Workers' Advocate. Other players include employers, workers, medical practitioners, providers of rehabilitation services, Yukon First Nations and the Yukon government."

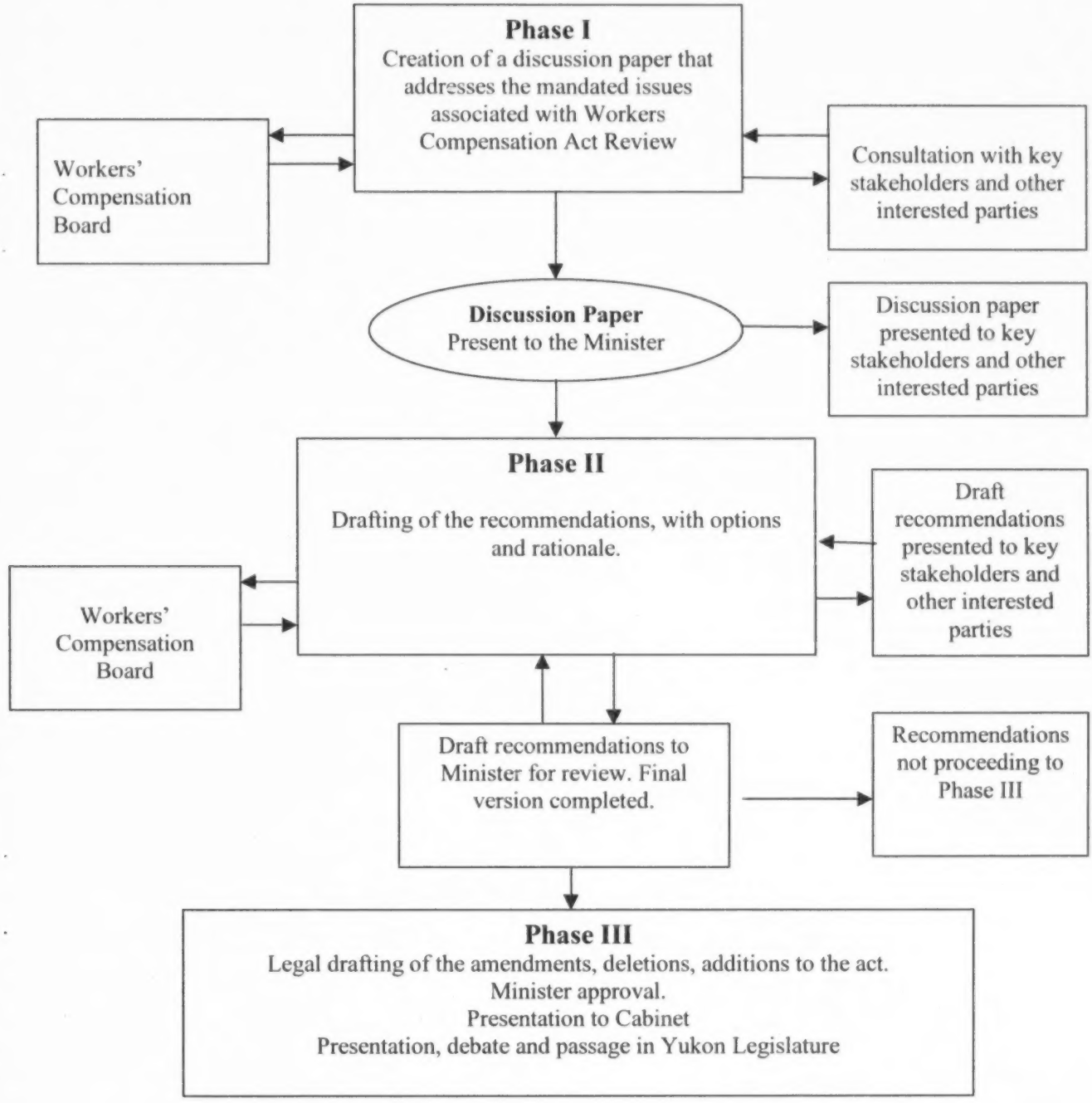
Phase 2

- The Review Panel, with the assistance of a professional consultant(s), will draft a set of recommendations for legislative change, each with rationale and options.
- The Review Panel will present the list of draft recommendations to consulted stakeholders and other interested parties and the Minister. This document will be publicly available.
- The final recommendations, with rationale and options, will be presented to the Minister. The Minister will make the final decisions regarding changes to the legislation.

Phase 3

- Recommendations will be finalized and accepted by the Minister.
- A legal draftsperson, in consultation with the review panel, will then draft the amendments and perhaps additions and deletions, to the Workers' Compensation Act.
- Final amendments, additions, and deletions will be presented to the Minister and Cabinet for approval.
- Final version will be presented to the Yukon Legislature for debate and passage.
- Time frame of Phase I and Phase II will be approximately 12 months, from January 1, 2003.
- Time required for the completion of Phase III will be determined by practical concerns, such as the schedule of the Yukon Legislature.
- Every effort will be made to complete the final phase in an expedient manner.

WCB Act Review


Phase I
Creation of a discussion paper that addresses the mandated issues associated with Workers Compensation Act Review
Workers' Compensation Board
Consultation with key stakeholders and other interested parties
Discussion Paper
Present to the Minister
Discussion paper presented to key stakeholders and other interested parties
Phase II
Drafting of the recommendations, with options and rationale.
Workers' Compensation Board
Draft recommendations presented to key stakeholders and other interested parties
Draft recommendations to Minister for review. Final version completed.
Recommendations not proceeding to Phase III
Phase III
Legal drafting of the amendments, deletions, additions to the act.
Minister approval.
Presentation to Cabinet
Presentation, debate and passage in Yukon Legislature

Timeframe

As outlined in the Terms of Reference, the Task Force review is divided into three phases, with the following deadlines:

Phase 1: May – July 2003

- Panel members will ask stakeholders to identify the topics in the Act that should be reviewed. The panel has compiled a list of topics that include those mandated by the 1999 Review, those suggested by the Auditor General, and issues of concern to the panel members. However, it's important that they hear from other Yukoners if there are additional issues that need to be addressed. Once the issues list is finalized, no new issues will be added.
  Deadline for submission of issues: May 30, 2003.

- The panel will compile all Act-related issues into a discussion document and invite stakeholders and other interested Yukoners to submit their comments on any and all of the topics listed. The overall objective is to collect broad points of view about how the Act should be changed to meet the needs of all Yukoners.
  Deadline for comments on issues: July 25, 2003.

2. Analyzing Issues – November 2003 – January 2004.

- This is the time in the review process when public input is synthesized. The panel will draft options, including rationale, for legislative change. These draft recommendations will be presented to the Minister responsible for the Yukon Workers' Compensation Health & Safety Board, consulted stakeholders and any other interested Yukoners. There will be a series of community meetings scheduled to allow you to provide detailed oral or written comment on the options outlined. **Watch local newspapers for details about community meetings*. A final report will then be prepared, which will include all the submissions from Yukoners.
  Deadline for comments on options: early 2004.

3. Drafting Legislation – January – December 2004.

- The recommendations will be finalized and accepted by the Minister. Any amendments, additions and deletions will be made to the *Workers' Compensation Act*. A final version will be presented to the Yukon Legislature for debate and passage.

How to reach us

Your views are an integral part of this review process. We welcome your suggestions on what issues should be examined during this review. Later in the process, when you've had a chance to see the full list of topics under review, we would like your comments and suggestions on any of them.

You are not limited to one submission. If you comment on some aspects of the Act, and later wish to comment on others, you are free to do so. The deadline for suggesting review topics is May 30. You will then have until July 25 to give broad comments on the issues laid out in the subsequent discussion paper. The fall of 2003 will be your opportunity to provide more detailed comment about the options the panel will prepare.

There are a number of ways you can make submissions to the review panel:
Submit your views online: www.wcbactreview.gov.yk.ca
Phone: (867) 667-8510 or toll free within the Yukon 1-800-661-0408 ext. 8510
Fax: (867) 393-6202
Email: wcbactreview@gov.yk.ca
Mailing address: WCB Act Review (WCARP), Box 2703, Whitehorse, Yukon Y1A 2C6

Getting started.....

Now that you have had a chance to review the general information, Phase 1 officially starts. Below is a list of sections from the *Workers' Compensation Act* that the panel has identified to date as needing review. Some of the issues are ones the Act itself requires to be reviewed and others are those that the Auditor General has identified (for details, see Terms of Reference located on pages four to seven of this booklet).

Panel members have identified a number of other issues that have been raised as concerns.

Before our list can be complete, however, we need to hear from you. Which issues do you think should be reviewed? Are other topics not listed in the next several pages that you think should be?

We ask that you limit your suggestions to Act related issues, and encourage you to become familiar with the Act if you aren't already. Copies can be obtained from our Web site at www.wcbactreview.gov.yk.ca.

Alternatively, you can get paper copies from the Workers' Compensation Office, Law Library, Workers' Advocate office, Employer Consultant's office or from the Yukon government's main Inquiry Centre. If you live in a Yukon community outside of Whitehorse and need a copy of the Act, please contact us and we will arrange to have one sent to you.

When submitting your suggestions for topics, it would be helpful, if possible, for you to indicate to which section of the Act your issues apply.

There is a submission form included at the back of this booklet that you can use to send us your list of issues, or you can submit online at our Web site or via email. Please see page nine of this booklet for more information about how to reach us.

Please remember: the overall question we want to address in this review is, 'How should the *Workers' Compensation Act* be amended to serve the needs of all stakeholders to the greatest extent possible?'

Question: Which of the following sections of the *Workers' Compensation Act* do you think need to be reviewed? If a section is not listed below, please indicate that it should be added to the list.

PART 1: ELIGIBILITY	
Act Reference	**Issue**
3	**Age limitation of claimants** Currently, compensation ceases at 65 years of age unless a worker is injured after the age of 63 in which case they are entitled to 24 months of benefits for loss of earnings.
4.1	**How government consents/accepts responsibility for volunteers** Volunteers are covered by compensation if they are within set groupings or the Government of Yukon determines them to be volunteers. Currently there is no specific public listing of who is or is not covered as volunteers. A method of how the Government of Yukon consents to volunteers being workers also is not included in the Act.

PART 2: CLAIMS PROCEDURE	
Act Reference	**Issue**
9, 11, 17, 18, 98	**Limitation periods** Workers must make a claim for compensation within 12 months of the date the disability (workplace incapacity) arose. Some feel that a worker or employer should have a specified time frame in which to appeal written decisions.
18.3 (12), 18.4 (1), 9.5	**Decisions must be keeping in the Act & policies** Rulings of an adjudicator, hearing officer or the appeal tribunal shall always be made in accordance with the Act, the regulations and the policies of the board. At times the policy, regulation and the Act are inconsistent with the Act.
11, 17, 18	**Process of dealing with new evidence** The decision-making hierarchy at the Workers' Compensation Board is: adjudicator, Hearing Officer and then Appeal Tribunal. Therefore, once an adjudicator makes a decision only the adjudicator or the Hearing Officer can overturn it, and once the Hearing Officer makes a decision only the Hearing Officer or the Appeal Tribunal can overturn it. A situation arises when new evidence comes forward (that may alter the original adjudicator's decision) after the issue has been heard be the Hearing Officer or Appeal Tribunal.
11, 17, 18	**Mediation as an effective method of primary dispute resolution** The appeal system is the formal and legalistic method to address disagreements with claims for compensation.
17, 18	**Administration standing at hearings** Currently the Act identifies that only workers or their dependants and employers are parties to hearings.

19	**Process for release of claims information** Designed to ensure all and only the information relevant to an issue of appeal is released.
19	**Implementation of the decision of the appeal tribunal timeframe** After the Hearing Officer or Appeal Tribunal renders its decision the board has 30 calendar days to implement the decision or have an implementation plan in place. The Board argued in court that 30 days was not sufficient to evaluate and implement the issues from the decision.
11, 16, 17, 19.4, 19.5, 98.1	**Term "adjudicator"** The Act it refers to decisions made by an adjudicator and rights to appeal decisions of adjudicators. Titles have changed, adjudicators have specialized and are now comprised of disability case managers, auxiliary adjudicator, senior adjudicator, benefit entitlement clerk, etc. With organizational and other changes, people other than adjudicators are making decisions and making statements that have the effect of being decisions.
11.1	**Recourse to review Workers' Advocate decisions under Section 11.1.3** The Workers' Advocate may refuse to provide services to a worker if he/she determines that there is no legitimate claim for compensation or the expectations are unreasonable given the circumstances. Currently, there is no right of review of the Workers' Advocate's decision.

PART 3: COMPENSATION FOR WORKERS	
Act Reference	**Issue**
31.1	**Definition of "initial treatment site"** Where a worker suffers a work-related disability, the worker's employer shall immediately provide and pay for emergency transportation for the worker to a hospital, medical practitioner, home, or other place that may be required by the worker's condition.
3	**Chronic Pain** The Act is currently silent on this issue.
3	**Chronic Stress** The Act is currently silent on this issue.
22,23	**Calculation of wage loss benefits** Currently the board calculates pre-accident earns through two methods. For the first 180 days workers receive 75 per cent of what the worker was making based on hourly, weekly or monthly rate of pay. After 180 days the board recalculates the pre-accident earnings to be based on 75 per cent of the best 12 consecutive months out of the past 24 months.
22, 23, 30	**Vocational rehabilitation benefits are established and provided based on calculation of wage loss benefits** There are two methods of calculating rate of compensation (see above). Questions have been raised about which rate should be used when workers are re-training after a workplace disability.
22,23	**Pay on day of injury** The Act is silent on this issue.
21	**Compensation for personal property loss (amount, triggers)** If a person suffers an accident that results in a workplace disability and sustains a loss or destruction of personal property the board may replace the lost or damaged goods up to a maximum amount of $200. This amount hasn't changed since 1993.

PART 3: COMPENSATION FOR WORKERS	
Act Reference	**Issue**
26	**Minimum compensation** Currently, if a worker earns less than $16,000 he/she receives 100 per cent of his/her pre-accident rate.
101 (earnings)	**Recognition of non earnings benefits** Workers' Compensation Board only replaces lost wages; there are no provisions for losses that are non-monetary or non-employment related e.g. dental plans or harvesting wild meat.
22,23,30	**The use of deeming** The standard used by the board to determine estimation of earning capacity.
34(1)	**The role and use of indexing of benefits** Currently, this section of the Act states the following: a. Two per cent to allow for any increases due to promotion and advancement which the worker might reasonably be expected to have received but for the work related disability, and; b. the percentage of change between the average wage for the year and for the immediately preceding year.

PART 4: COMPENSATION FOR DEPENDANTS	
Act Reference	**Issue**
36	**<u>The adequacy of the system for spouses</u>** Currently the monthly payment is 3.125 per cent of maximum wage rate.

PART 5: RIGHT OF ACTION AND ASSIGNMENT	
Act Reference	**Issue**
41(4)	**Limitation on legal rights as it relates to vehicles** A worker cannot bring action against another employer or workers of that other employer covered under the Act unless the disability was caused or contributed to by the use of a vehicle.
42	**Division/control of subrogated claims** Section 42(c) states that no payment or settlement may be made in respect of the cause of action without the prior approval or the board.

PART 6: COMPENSATION FUND	
Act Reference	**Issue**
47 (4)	**Authority over Fund** Currently there is a requirement within the Act that prior to any changes to the investment strategy of the fund; the Commissioner in Executive Council needs to approve these amendments. The board is restricted to administer the fund under the requirements of the *Trustee's Act* and it is the fiduciary responsibilities of the board of directors to ensure that the fund is managed as effectively as possible based on the current market conditions and opportunities.
43 (1)	**Establishment of Compensation Fund separate from the Yukon Consolidated Revenue Fund** The Act states that an account called the Compensation Fund shall be established within the Yukon Consolidated Revenue fund into which all monies received by the board shall be deposited.

PART 7: ASSESSMENTS	
Act Reference	**Issue**
55. (1) 57	**Incentive programs** The board may currently adopt incentive programs to reward employers for safe worksites.
68 (3)	**Employers' appeal process** Currently the process is left to policy and the board determines how the appeal is disposed of.

PART 8: ENFORCEMENT AND PRIORITIES	
Act Reference	**Issue**
	No current issues identified.

PART 9: OFFENCES AND PENALTIES	
Act Reference	**Issue**
	No current issues identified.

PART 10: MISCELLANEOUS	
Act Reference	**Issue**
	ATIPP (Access To Information and Privacy Protection) ATIPP no longer applies to the Workers' Compensation Board.
	Employer Consultant This deals with the role, effectiveness, reporting and balance of the Employer Consultant.
	Workers' Advocate This deals with the role, effectiveness, reporting and balance of the Workers' Advocate.

PART 11: WORKERS' COMPENSATION HEALTH & SAFETY BOARD	
Act Reference	**Issue**
96(5) 97(6)	**Limitation periods** Currently there is no time limitation on when an issue can be brought before the Appeal Panel.
92(1)(d), 100(1), 100(5), 100(6)	**Reporting structure of president** The Act requires that the president report to the government as a Deputy Minister and also to the Board of Directors.
18.1(4), 92(1)	**Relationship between Appeals Tribunal and Board** Currently the Chair of the Appeal Tribunal is a member of the Board of Directors.
	Annual Reporting of the Appeals Tribunal, Workers' Advocate and Employer Consultant What type of reporting, how often and what type of measurable goals should be required for presentation to the legislature?
18.1(5), 92(5)	**Process for appointment(s) to the Board and Appeal Tribunal** The Act currently calls for the Minister to consult prior to appointments.
92 (1)	**Public representation on the Board of Directors** The Auditor General has suggested that the presence of public interest representatives on the Board could help ensure that members put the interests of the system ahead of specific individual or group interests.
93(c), 93(c.1)	**Align the annual report with the financial statements** Currently the financial statements must be into the Minister by June 30th of each year and yet the annual report must be to the Minister within 90 days after the end of each calendar year.

93.1	**Annual reporting of Board & President to the Legislative Assembly** Currently there is a requirement that the Chair of the Board of Directors and the President appear annually.
93(a), 100	**Board policy development (emerging issues, are policies current)** Currently there is no process enshrined in the Act as to how and how quickly the board will develop, review or implement policies.
	Relationship between government and Board The Auditor General's report states that the relationship between the government and the board is currently ineffective.
	Claims costs Do you have any comments on this aspect of the Act?
	Administration costs Do you have any comments on this aspect of the Act?
	Information in annual YWCHSB Annual Report The Auditor General has requested that there be more meaningful reporting to stakeholders in the annual report.
	Voting role of the Chair Should the Chair of the Board of Directors have the right to vote and under what circumstances?
99(2)	**The effectiveness and appropriateness of the board administering both the *Workers' Compensation Act* and the *Occupational Health and Safety Act*** Is it effective and appropriate for the board to administer both of the above Acts?

PART 12: DEFINITIONS	
Act Reference	**Issue**
101	**Chronic Stress** Currently there is no definition.
101	**Chronic Pain** Currently there is no definition.
101	**Disability vs. Impairment** Currently there is a lack of clarity around the use of the word disability and no definition for impairment.
101	**Method of Calculating Maximum Wage Rate** Currently the Act calculates the rates in the following way: d) for each year after 2003, an amount equal to the product of: 1) the maximum wage rate for 2003, and 2) the quotient obtained when the average wage for the year is divided by the average wage for 2003, Rounded to the nearest multiple of one hundred dollars
101	**Definition of a vehicle** The current definition of a vehicle is any mode of transportation the operation of which is protected by liability insurance. This includes heavy machinery and airplanes. This broad definition can have an impact on the ability of the board to recover money from employers.
	Definition of compassion Currently there is no definition.
	Definition of holistic approach to rehabilitation Currently there is no definition of "holistic approach to rehabilitation."

PART 12: DEFINITIONS	
Act Reference	**Issue**
	<u>Auditor General Special Examinations</u> Should there be built into the Act a requirement for another special examination within a certain period of time?

Yukon Government

WORKER'S COMPENSATION ACT REVIEW
SUBMISSION FORM

Please use the following form to provide your suggestions for topics or issues to be reviewed. We appreciate you taking the time to help the review panel ensure *the Workers' Compensation Act* serves the needs of Yukoners to the greatest extent possible. We ask that you provide your contact information on this form so that we can keep you informed as this review proceeds.

Name _____

Address _____

Phone number _____

Email address _____

Would you like us to include you on our mailing list?

Please indicate preference: Canada Post _____ Email _____ Fax _____

We invite you to identify which issues should be reviewed, keeping in mind that the panel is mandated to only look at issues related to the *Workers Compensation Act? *If possible, please reference the section of the Act to which your issue applies.*

Use the back of this page if you require more space.

Note: you are not limited to one submission. If you comment on some aspects of the Act, and later wish to comment on others, you are free to do so.

The deadline for suggesting review topics is May 30, 2003.

If you prefer to send a paper copy of your completed form to us, you can do so the following ways:
Fax: (867) 393-6202
Email: wcbactreview@gov.yk.ca
Mailing address: WCB Act Review (WCARP), Box 2703, Whitehorse, Yukon Y1A 2C6

If you prefer to provide your ideas orally:
Phone: (867) 667-8510 or toll free within the Yukon 1-800-661-0408 ext. 8510

Thank you for taking part in this review.